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## **SCHEDULE CASTE: MONOLITHIC BLOCK OR POLYMORPHIC CLASS?**

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### **INTRODUCTION**

Dr. B.R. Ambedkar rightly emphasised that the annihilation of caste is essential for establishing liberty, equality, and fraternity in a country. The positive discrimination enshrined in the Constitution of India laid the foundation for social democracy. However, as circumstances in the country have evolved, there is a growing need to reform the reservation system to prevent the concentration of power among a select few. Many advocate for sub-classification within communities to uplift the most downtrodden to the same level as the privileged within the same community.

In the recent Supreme Court case of *State of Punjab v. Davinder Singh (2024)*<sup>3</sup>, the concept of sub-classification within the Scheduled Caste (SC) community was upheld. This judgement has sparked significant debate and concern among the SC and other communities. This article delves into the challenges associated with sub-classifying the SCs and the implications of such measures in detail.

### **SC COMMUNITY: AN INDIVISIBLE MONOLITHIC BLOCK?**

While caste communities in India may appear homogeneous *prima facie*, a deeper examination reveals significant *interse* differences among them. In certain instances, individual members of the same community face differential treatment and discrimination by their fellow members. The SEBC community exemplifies this contention. Recently, Akhilesh Yadav, a prominent political leader in Uttar Pradesh, alleged caste-based discrimination by BJP MP Anurag Thakur, who belongs to the same community<sup>4</sup>. This underscores the point that the supposed homogeneity of caste is a legal fiction and should not be stretched to claim that there are no 'internal differences', as aptly noted by the Chief Justice.

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<sup>3</sup> *State of Punjab v. Davinder Singh*, (2025) 1 SCC 1.

<sup>4</sup> *'Can't forget the day ...': Akhilesh Yadav recalls alleged caste based discrimination*, THE TIMES OF INDIA (Jul 31, 2024, 2:15 PM), <https://timesofindia.indiatimes.com/india/cant-forget-the-day-akhilesh-recalls-alleged-caste-based-discrimination/articleshow/112158480.cms>.

Following this line of reasoning, we can argue that if castes are not homogeneous, sub-classification within these castes can be introduced based on certain reasonable parameters. This sub-classification has already been introduced in the SEBC community after the landmark decision in the case of *Indra Sawhney v. Union of India, 1992*<sup>5</sup>, wherein the concept of creamy layer was introduced in the SEBC community based upon the income of the communities.

However, the question of whether the sub-classification within the SC community is allowed or not persisted even after the *Indra Sawhney* Judgement. In the case of *EV Chinnaiiah v. State of Andhra Pradesh, 2004*<sup>6</sup>, the debate was put to rest by stating that such sub-classification isn't possible as it's unconstitutional. The tinkering with the presidential powers given under Article 341 makes it impossible to categorise SC caste further. However, the question to ponder here is how the creamy layer was introduced under the SEBC community if it amounted to tinkering with presidential powers. Therefore, the reasoning given in this case was flawed and hence inconsistent with the *Indra Sawhney Judgement*.

Later on, in the landmark judgement of *Jarnail Singh v. Lachhmi Narain Gupta, 2018*<sup>7</sup>, the Supreme Court upheld the concept of the 'creamy layer' within SCs and permitted sub-classification within the SC community too.

The Supreme Court upheld *Jarnail Singh's judgement* in the recent case of *State of Punjab v. Davinder Singh, 2024*. It was stated that the SC is not an indivisible monolithic block and could be sub-classified using the principle of "intelligible differentia"<sup>8</sup> enumerated under Article 14 of the Constitution<sup>9</sup>. The sub-classification shouldn't be arbitrary and should have a real nexus to the objective of such sub-classification. Further, it has to be noted that such classification would be subject to judicial review.

Therefore, we can conclude that the SC community isn't a monolithic block and can be further classified for substantive equality.

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<sup>5</sup>Indra Sawhney v. Union of India, AIR 1993 SC 477.

<sup>6</sup>E.V. Chinnaiiah v. State of Andhra Pradesh, (2005) 1 SCC 394.

<sup>7</sup>Jarnail Singh v. Lachhmi Narain Gupta, (2022) 10 SCC 595.

<sup>8</sup> Shruti Kakkar, 'Intelligible Differentia' : Supreme Court Upholds State Policy To Deny Bonus Marks To NRHM/NHM Employees In Other States, LIVE LAW (17 Feb 2022 9:02 PM), <https://www.livelaw.in/top-stories/supreme-court-state-policy-decisions-applicability-of-intelligible-differentia-nrhm-nhm-192217?fromIpLogin=50894.11133637918>.

<sup>9</sup>INDIA CONST. art. 14.

## NAVIGATING THE RESERVATION THROUGH A CONSTITUTIONAL LENS

Having discussed the legitimacy of the sub-classification of SC, it is essential to examine whether the sub-classification of SCs is constitutionally valid. Art. 15(4)<sup>10</sup> and Art. 16(4)<sup>11</sup> provide that special laws can be made to advance SC, and reservations can be given to them in education and jobs, respectively. Art. 15(1)<sup>12</sup> provides that no discrimination should be made based on caste; however, in the case of *State of Kerala v. NM Thomas*<sup>13</sup>, the Court observed the SC is not a caste; instead, it's a class of persons which is a broader term than class. The scope of reservation by including the word class and not caste becomes broader as it is not only limited to the classification of castes; instead, it now extends to a class of persons, and a set of people who are economically and socially downtrodden can be constituted as a class. It can be said that the SC in today's time is further divided into sub-castes<sup>14</sup> that appear in different groups. The downtrodden section within the SC community can be taken to form a class of persons based on the level of poverty and discrimination they face in the SC community itself.

Dr Ambedkar, in the Constitutional Debates<sup>15</sup>, said that backwardness should be decided based on equality of opportunity, with reservation being given to only certain classes and not to a larger section of the society. Since the principle of classification<sup>16</sup> remains the same for all the castes, including SCs and SEBCs, the same doctrine, i.e. the doctrine of equality of opportunity, can be applied while sub-classifying the SCs, which was used in the case of introducing creamy layer in the *Indra Sawhney* or in the case of *Janhit Abhiyan v. Union of India*<sup>17</sup> for sub-classification within SC. This doctrine signifies the principle of equality given under Art. 14. The reservation should be given to those within SC who have limited access to resources and need representation in society.

Moreover, Art. 335 of the Constitution also provides that the provision for SC should be made considering the effectiveness of the administration<sup>18</sup>. The primary intention of the government was to provide laws for the advancement of the most backward class; hence, sub-

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<sup>10</sup>INDIA CONST. art. 15, cl. 4.

<sup>11</sup>INDIA CONST. art. 16, cl. 4.

<sup>12</sup>INDIA CONST. art. 15, cl. 1.

<sup>13</sup> *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.

<sup>14</sup>Supra note 1.

<sup>15</sup>Constituent Assembly Debates 793 (India) (Nov. 30, 1948) (statement of Dr. B.R. Ambedkar).

<sup>16</sup>Vanda Broughton, *First Principles of Classification, in Essential Classification* 7, 7–12 (2d ed. 2015).

<sup>17</sup>*Janhit Abhiyan v. Union of India (EWS Reservation)*, (2023) 5 SCC 1.

<sup>18</sup>INDIA CONST. art. 335.

classification is necessary to identify the backward class within the SC and to provide for their upliftment to serve the purpose of Art. 15(4) and Art. 16(4) of the Indian Constitution.

### **TINKERING PRESIDENTIAL POWER**

While discussing the constitutional provisions concerning the sub-classification of SCs, it is imperative to note that the powers vested in the President under Art. 341 serves as a testament to the commitment of the framers of the Constitution towards social justice. Art. 341(1) of the Constitution gives the power to the President to specify within the SC any classes or tribes<sup>19</sup>. Art. 341 provides a presidential list of amendments that Parliament can add or remove by issuing a notification.

The Supreme Court, in the case of *EV Chinnaiah v. State of Andhra Pradesh, 2004*, observed that sub-classification of SCs will lead to the tinkering of the Presidential power given under Art. 341. Building on the same line of argument, the Supreme Court in the case of *State of Kerala v. NM Thomas*, the Court held that once a caste is included in the Presidential list, it is a class by itself, and any changes made in it will lead to tinkering with the Presidential list.

However, the Court took a different opinion in the case of *Jarnail Singh and Ors. v. Lacchmi Narayan Gupta and Ors., 2018*, where the Court held that the caste or class in Sec. 341 of the list continues as before and sub-classification will only bring about the exclusion of those who have come out of untouchability and backwardness. Following this argumentation line, the Court in the case of *State of Punjab v. Davinder Singh, 2024*, overruled the judgement of the Chinnaiah case. It held that sub-classification of SCs does not tinker with the Presidential power.

Analysing the line of argument from both cases, the reasoning given in the *Jarnail Singh case* and *Davinder Singh case* provides a better perspective on the sub-classification of SCs. The intent of adding Art. 341 was to prevent any political factors from playing a role in the classification. When Dr. Ambedkar was referring to Art. 341 in the Constituent Assembly, his intention was to prevent any inclusion or exclusion from the list<sup>20</sup> due to political factors.

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<sup>19</sup>INDIA CONST. art. 341, cl. 1.

<sup>20</sup>*Constituent Assembly Debates 798–800 (India)* (Nov. 30, 1948) (statement of Dr. B.R. Ambedkar) (on Draft Art. 10, emphasizing Parliament's exclusive power under cl. (2) to modify lists, insulating from "executive or political pressures").

However, sub-classification does not imply any exclusion from the SC; it merely forms a class within SC to provide for the growth and development of those who are still backward and to differentiate between backward and most backward classes.

### **CREAMY LAYER: A PROGRESSIVE STEP?**

Even though the question of the creamy layer wasn't raised in the case of *State of Punjab v. Davinder Singh, 2024*, it's an inevitable consequence of sub-classification that has to be dealt with. SEBC inculcated the concept of a creamy layer after the judgement of *Indra Sawhney*, and it resulted in an adequate representation of downtrodden sections of society within the SEBC community. However, just because it worked for SEBC doesn't mean that it would work similarly for the SC community as well since there's a lot of difference in the social hierarchy of the two groups.

Let's weigh the pros and cons of introducing a creamy layer in the SC Community and then decide whether it would be a good step or not.

Reasons why creamy layer should be introduced:

- a) *Firstly*, to avoid 'reverse discrimination',<sup>21</sup> we have to see that those who were in better positions earlier are not themselves being discriminated against (under the pretext that they are made equal to) those people who are given reservations. In other words, affirmative action should be allowed to alleviate the disadvantaged while not letting them create new forms of discrimination against those who were privileged before but are now reduced to the same level as those for whom reservations are made.
- b) *Secondly*, as stated in *BK Pavitra v. Union of India, (2019)*<sup>22</sup>, to achieve real and meaningful equality, we need to acknowledge and address the inequalities that exist in our society. Instead of treating everyone the same, we should focus on substantive equality<sup>23</sup>. Therefore, to inculcate substantive equality over formal equality in our society we need a creamy layer within the SC community as well.

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<sup>21</sup>Reverse Discrimination, Wex, Legal Info. Inst., Cornell L.Sch., [https://www.law.cornell.edu/wex/reverse\\_discrimination](https://www.law.cornell.edu/wex/reverse_discrimination) (last updated May 2024).

<sup>22</sup> B.K. Pavitra v. Union of India, (2019) 16 SCC 129.

<sup>23</sup>Shruti K.O., *Affirmative Action Under Article 15(3): Reassessing the Meaning of "Special Provisions" for Women*, Nat'l L. Sch. India Rev. (2023), [https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1086&context=nlsir.\[page:previous\]](https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1086&context=nlsir.[page:previous]).

- c) *Thirdly*, the benefits of the reservation are by and large taken by the topmost creamy layer of the SC community, thus keeping the weakest among the weak always disabled. Therefore, it perpetuates *intra-community inequities*. Justice Gavai rightly pointed out the children of IAS or IPS officers couldn't be treated similarly to those children who belong to remote villages even though they belong to the same community. Hence, those who have received a good educational and economic advantage over the others should be disabled to take advantage of reservation.

Hence, the creamy layer concept ensures that only those who are genuinely in need get the benefit of reservation.

Reasons why creamy layer shouldn't be introduced:

- a) It has been noted by many academicians<sup>24</sup> that simply because a person from the SC community has achieved a good education and public employment doesn't mean that he may not have to face any discrimination. The profound and historical marginalisation of these groups, which has persisted for generations, requires long-term efforts to overcome.
- b) The proposed sub-categorization could lead to more divisions within the community due to the introduction of sub-quotas. It might disrupt *inter-caste unity* and reinforce caste identities, going against the principles of Dr Ambedkar of annihilating the castes from society to establish social democracy.

### **A PATH FORWARD**

Even though the decision of the Supreme Court, in this case, is exemplary, implementing the sub-classification of SCs into a creamy layer requires a cautious approach. One of the ways out is the caste census. An effective caste census<sup>25</sup> can provide information for initiating well-directed measures, reducing widespread inequality across the community and promoting social justice and equity in the long run. Thus, the government could bring a caste census into the picture and help in the effective implementation of the sub-classification of the SC

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<sup>24</sup>Vishnu Prabhu, *Indian Caste System: Historical and Psychoanalytic Views* (2015), [https://www.researchgate.net/publication/284785411\\_Indian\\_caste\\_system\\_Historical\\_and\\_pschoanalytic\\_views](https://www.researchgate.net/publication/284785411_Indian_caste_system_Historical_and_pschoanalytic_views).

<sup>25</sup>*Explained: What Is The Caste Census & Why It Is Demanded By Political Parties Now?*, IndiaTimes (last updated 2025), <https://www.indiatimes.com/explainers/news/explained-what-is-the-caste-census-why-it-is-demanded-by-political-parties-now/articleshow/127478633.html>.

community. This unique blend of caste census and creamy layer could help the State bring substantive equality into the picture and uplift the downtrodden sections within the communities as well.